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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/564,247	04/24/2006	Jean-Claude Volckmann	930024-2041	8015
7590	09/18/2008		EXAMINER	
Ronald R Santucci Frommer Lawrence & Haug 745 Fifth Avenue New York, NY 10151			SRIVASTAVA, TARUN K	
			ART UNIT	PAPER NUMBER
			3732	
			MAIL DATE	DELIVERY MODE
			09/18/2008	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/564,247	VOLCKMANN ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	TARUN K. SRIVASTAVA	3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 05/28/2008.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-10 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-10 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 11 December 2006 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____.   | 6) <input type="checkbox"/> Other: _____ .                        |

## DETAILED ACTION

### *Drawings*

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: the reference number '30' in figure 3 is not mentioned in the specification.
2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the nonreturn pawl that is formed from the elastically deformable part in claim 6 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered. NOTE: for purposes of examination, it is assumed that applicant intends to claim that the elastically deformable liner is in communication with the nonreturn pawl.
3. Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Specification***

4. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

5. The abstract of the disclosure is objected to because it contains legal phraseology such as "comprises". Correction is required. See MPEP § 608.01(b).

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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7. Claims 1 – 4 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Jacklich (US 4,444,560).

Jacklich adequately discloses a device 7 capable of being molded including:

- a body 9, a part 37 to contain the product and an orifice 33 for ejecting the product;
- a drive cylinder 61 with teeth 63 consisting of two consecutive crests connected by a radius (see figure 1) moving in a bore 45;
- a lever 11 acting on the teeth of the cylinder through an articulated pawl 57 and returned by a pawl 65;
- wherein the lever 11 is connected by means of a joint (the hinge connection at 51) with the ability to be dislocated;
- wherein the drive cylinder 61 has a sector 69 with no teeth and has one end shaped to engage in a slot 49 formed on the nonreturn pawl.

8. Claims 1,5, and 7 – 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Vadas (4340367).

Regarding claim 1, Vadas adequately discloses: a device (figures 1 – 4) for ejecting a product, including a product container (L) with an orifice (20) for ejecting the product, a drive cylinder (100) with teeth (102), an articulated lever (40) acting on the drive cylinder through an articulated pawl (130) articulated to the lever, and a nonreturn pawl (160), wherein the lever is connected to the body by means of a joint (41,42) that can be dislocated.

With respect to claims 5, and 8 – 10, Vadas further discloses a liner (170) able to rotate with respect to the body, and a liner (110) that is able to have translational movement (sliding; column 5, lines 37 – 42) with respect to the body, and has a means of connection (must inherently be connected) to the part intended to contain the product. Further, the body is made of a material that can be molded.

Addressing claims 7 and 8, Vadas further teaches a liner with a stud (stop shoulder 114) designed to act on a pawl (column 5, lines 54 – 65).

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

11. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Vadas.

Vadas adequately discloses a device for ejecting a product as claimed as discussed above, but fails to teach a liner being elastically deformable part constituting the non-return pawl. However, it would have been obvious to one of ordinary skill in the

art, at the time of applicant's invention, to select an elastic material for the since it has been held that the selection of a known material based on its suitability for its intended use supported a *prima facie* obviousness determination in "Sinclair and Carroll Company v. Interchemical Corporation" (325 US 327, 65 USPQ 297 (1945)).

***Response to Arguments***

12. Applicant's arguments with respect to claims 1 – 10 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO 892.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to TARUN K. SRIVASTAVA whose telephone number is (571)270-3769. The examiner can normally be reached on M - F 5:30 - 2:00 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez can be reached on 571-272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Respectfully,  
TKS  
/T. K. S./  
Examiner, Art Unit 3732  
08/13/2008

/Cris L. Rodriguez/  
Supervisory Patent Examiner, Art Unit 3732